

The U.S. Patent and Trademark Office (the "USPTO") mailed a non-final Office Action on March 9, 2006.

Applicant filed a response to the non-final Office Action on June 9, 2006.

The USPTO mailed a non-final Office Action on August 1, 2006.

Applicant filed a response to the non-final Office Action on October 23, 2006.

The USPTO mailed a Final Office Action on January 10, 2007.

Applicant filed a response to the Final Office Action and Request for Continued Examination (RCE) on April 10, 2007.

The USPTO mailed a non-final Office Action on June 21, 2007.

Applicant filed a response to the non-final Office Action on August 20, 2007.

The USPTO mailed a Final Office Action on October 26, 2007.

Applicant filed a response to the Final Office Action and RCE on October 31, 2007.

The USPTO mailed a Notice of Allowance on February 20, 2008.

Applicant paid the issue fee and filed an Amendment After Allowance on May 16, 2008.

The application issued as U.S. Patent No. 7,403,933 on July 22, 2008.

The patent is not subject to a terminal disclaimer and there were no circumstances constituting a failure by Applicant to engage in reasonable efforts to conclude processing or examination of the application as set forth in 37 C.F.R. § 1.704.

The issued patent reflects a patent term adjustment that extends the term of this patent by 401 days. Applicant respectfully submits that this amount is incorrect because it does not take into account the USPTO's delay in issuing the patent past the

three year pendency date of the application. Applicant further submits that the correct patent term adjustment should reflect an additional 161 days, i.e., the term of the patent should be adjusted by a total patent term adjustment of 562 days.

Pursuant to 37 C.F.R. §§ 1.702(a)(1) and 1.703(a)(1), Applicant is entitled to an adjustment in patent term equal to “[t]he number of days, if any, in the period beginning on the day after the date that is fourteen months after the date on which the application was filed . . . and ending on the date of mailing of . . . an action under 35 U.S.C. 132.”

37 C.F.R. § 1.703(a)(1). The 401 days of patent term adjustment accorded to this patent corresponds to the delay by the USPTO in issuing a first Office Action subtracted by Applicant delay in filing an Amendment After Allowance. As reflected above, the first Office Action was mailed March 9, 2006, and that date was 433 days after October 31, 2003 (i.e., the day that was fourteen months after the date on which the application was filed). Moreover 32 days of Applicant delay are subtracted from the 433 days of USPTO delay to result in a total patent term adjustment under this section of 401 days.

Applicant's delay is due to the Amendment After Allowance filed May 16, 2008, which the USPTO responded to 32 days later on June 16, 2008.

Pursuant to 37 C.F.R. §§ 1.702(b) and 1.703(b), Applicant is also entitled to an adjustment in patent term equal to “the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed . . . and ending on the date a patent was issued, but not including the sum of . . . the number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.” 37 C.F.R. § 1.703(b). As reflected above,

the application was filed October 31, 2003, and three years after the application's filing date was October 31, 2006. Moreover, the first RCE of this case was filed 161 days later on April 10, 2007. Therefore, the patent term adjustment under this section is 161 days.

However, 37 C.F.R. § 1.703(f) indicates that the patent term "shall be adjusted for the sum of the periods calculated under paragraphs (a) through (e) of this section, to the extent that such periods are not overlapping." In this case, however, there is no overlap. Accordingly, Applicant is entitled to 401 days pursuant to 37 C.F.R. §§ 1.702(a)(1) and 1.703(a)(1) plus 161 days pursuant to 37 C.F.R. §§ 1.702(b) and 1.703(b), to result in a total of 562 days.


For the foregoing reasons, Applicant submits that the patent is entitled to an additional 161 days of patent term adjustment, i.e., a total patent term adjustment of 562 days.

Please charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: January 16, 2009

By: 
Fahd Hussein Patel
Reg. No. 61,780